TRAVERS SMITH

What's happening in Pensions

Issue 38 *March 2013*

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State pension reform and the end of contracting-out

A White Paper and draft Pensions Bill have been published by the Government, confirming that most elements of state pension provision, including the basic state pension and the additional state pension, will be consolidated into a single tier state pension. Any pension schemes with a benefit design that takes account of state pension provision (eg, a state pension or Lower Earnings Limit offset or a bridging pension) will be affected. Scheme rules and member literature will need to be reviewed.

This was originally announced to occur not before April 2017 but the Government later announced an April 2016 implementation date.

Contracting-out will end at the same time and affected employers and employees will face increased National Insurance Contributions. Private sector employers with contracted-out schemes will be given a time-limited statutory power to amend the scheme, without the need for trustee consent, to neutralise the financial impact on them. Public sector employers and employees are expected to absorb the extra cost.

No help is offered to schemes wishing to address GMP-related inequalities by way of a one-off equalisation exercise but the Government is still considering the possibility.

For more details and background, please see our briefing note **"State pension reform and the end of contracting-out"** (but please note that this was issued before the Government's decision to bring the reforms forward by a year).

White Paper:
http://www.dwp.gov.uk/policy/pensions-reform/state-pension/

Draft Pensions Bill:
http://www.dwp.gov.uk/policy/pensions-reform/the-draft-pensions-bill/

Ministerial statement:
http://www.parliament.uk/documents/commons-vote-office/March-2013/19-3-13/7-DWP-StatePensionReform.pdf

The Government is consulting on whether legislation restricting the amendment of pension benefits for "protected persons" (individuals who work in formerly nationalised industries) should be similarly relaxed.

Consultation:
http://www.dwp.gov.uk/consultations/2013/protected-persons.shtml

Draft Pensions Bill: other provisions

The draft Pensions Bill will also:

- give the Government a power, exercisable for seven years, to make regulations prohibiting incentivised transfers from DB pension schemes. No announcement has been made about the Government's intentions in this regard.
- prohibit a company from acting as a trustee of a pension scheme if one of its directors is prohibited by the Pensions Regulator from acting as a trustee.
- permit the Pensions Regulator to allow schemes with four or fewer members to submit scheme returns every five years (rather than three).

Pension protection levy

Contingent assets: PPF observations on assessing guarantor strength
The PPF published, and later amended, a note of *"Observations on the PPF's assessment of guarantor strength for selected Type A contingent assets [guarantees] certified/re-certified in 2012/13"*. The note includes some basic examples and new FAQs.

PPF amended note:
http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/CA_strength_Feb13.pdf

The note warns trustees to give careful consideration to the question of whether the guarantor would be able to meet its obligations under the guarantee when all employers are insolvent (other than the guarantor, if it is an employer), especially if the assets of the guarantor include shares in or loans to the other employers.

The note originally questioned the value of a guarantee for a "last man standing" scheme if the guarantor is also an employer, but the amended version says that the PPF will recognise the guarantee if it is likely that the guarantor could meet the PPF deficit of the other (assumed insolvent) employers whilst itself continuing to trade.

FAQs on deficit reduction contributions
The PPF has added new FAQs on deficit reduction contributions to its website. The most interesting one concerns employer asset-backed contributions:

FAQs:
http://www.pensionprotectionfund.org.uk/FAQs/Pages/faqdisplay.aspx?search=t&subjectid=46

> ***"If the employer pays a special contribution for the trustees to invest in a Special Purpose Vehicle ("SPV") (such as entering into a Scottish limited partnership with the employer), can the contribution qualify as a DRC?***
>
> *Provided that the employer's contribution is irrevocable it may be allowed as a DRC provided that all of the DRC requirements in the Determination and the Deficit-Reduction Contributions Appendix are met. In particular, the Board does not consider that a contribution can be seen as irrevocable if it is subject to repayment if not used for a specified purpose (eg, investment in an SPV).*
>
> *In addition, schemes should note the requirement that, in order to qualify as a DRC, the employer's special contribution must appear to the Board to have the effect of reducing the difference between the scheme's assets and protected liabilities, or increasing the difference where the scheme is in surplus. The special contribution, in addition to being an unconditional payment to the trustees, must therefore be capable of being assessed as a quantifiable cash contribution received by the trustees into the scheme."*

Scheme funding

Following the Chancellor's announcement in the Autumn Statement (see **WHiP Issue 37**), the Government issued calls for evidence on:

Calls for evidence:
http://www.dwp.gov.uk/consultations/2013/pensions-and-growth.shtml

- whether schemes should be allowed to smooth DB pension scheme asset and liability values for future actuarial valuations (and, if so, how); and
- whether the Pensions Regulator should be given a new statutory objective to consider the long-term affordability of deficit recovery plans to sponsoring employers (or whether the Regulator's existing approach, which already recognises the importance of a solvent employer, is enough).

In the Budget delivered on 20 March 2013, the Government announced that:

DWP press release:
http://www.dwp.gov.uk/newsroom/press-releases/2013/mar-2013/dwp035-13.shtml

- smoothing would not be introduced, but
- the Regulator will be given a new statutory objective *"to support scheme funding*

arrangements that are compatible with sustainable growth for the sponsoring employer and fully consistent with the 2004 funding legislation", with the precise language to be published shortly.

The Pensions Regulator commented:

> *"In light of the Government's proposal for a new objective to take account of the sustainable growth plans of the sponsoring employer, we will make the changes required, building on the 2004 funding regime, as part of a review of the Code of Practice for defined benefit (DB) funding that we will launch as soon as possible this year.*
>
> *In addition, we will shortly publish an annual funding statement which will set out our guidance to trustees in the context of current economic circumstances, including the flexibilities available to trustees and company sponsors in the current regime, particularly the freedom to choose the basis on which contribution levels and valuations are calculated."*

Press release:
http://www.thepensionsregulator.gov.uk/press/pn13-13.aspx

Miscellaneous amendment regulations

Regulations:
http://www.legislation.gov.uk/uksi/2013/459/contents/made

Consultation response:
http://www.dwp.gov.uk/docs/occ-pen-schemes-misc-amend-regs-2013-response.pdf

Miscellaneous amendment regulations have been laid and will come into force on 6 April 2013. The final regulations merge two sets of draft regulations on which the Government had consulted – see **WHiP Issues 35** and **36**. A combined consultation response has been issued.

The regulations include the following provisions.

- **Amending salary-related contracted-out schemes**

  When benefit amendments are made to a contracted-out salary related scheme, the scheme actuary must certify that the scheme will still satisfy the reference scheme test. The Government said that its intention had been that this should apply to accrued benefits as well as to future service benefits. It only works for the latter, however, because the reference scheme test is forward-looking. The Government is therefore amending the regulations so that they clearly apply only to future service benefit changes.

  There will be new restrictions on amending accrued rights under contracted-out schemes. From 6 April 2013, this cannot be done unless one of the following applies:

  - members' and spouses' or civil partners' post-1997 benefits are *"at least equal to"* the reference scheme benefits;
  - section 67 (regarding the protection of subsisting rights) does not apply to the amendment;
  - if section 67 does apply, the amendments are not "detrimental" or "protected" modifications under section 67A; or
  - if the amendment is "detrimental", the section 67 actuarial equivalence test is met.

  In the latter two cases, spouses' and civil partners' pensions for post-1997 contracted-out service must be *"at least as generous"* (on a leaving service basis) as before the amendment.

- **Bulk transfers**

  Currently, bulk transfers that include contracted-out rights can only be made to a scheme that has at least one active contracted-out member. Such transfers will now be permitted to formerly contracted-out schemes (in the same way as they are already permitted <u>from</u> formerly contracted-out schemes). So it will not be necessary for either scheme to have any active, contracted-out members. However, both schemes must relate, or have formerly related, to employment with the same employer.

  The regulations also correct an error in the preservation regulations which has made it impossible for a bulk transfer without consent to be made to a scheme established in an EEA state (other than the UK) since 22 September 2005.

- **Indexation and transfer value rights**

  Members who left pensionable service before 1 January 1986 entitled to uncapped RPI revaluation have no statutory right to a transfer value. Amendments will ensure that this remains the case if the scheme switches from RPI to CPI for revaluation, if revaluation remains uncapped. Only a very small number of schemes are expected to be affected.

- **Indexation and pension credit benefit**

  Amendments will allow schemes to use CPI or RPI to increase pension credit pensions in payment (ie, pension shared with a former spouse in connection with divorce proceedings). They will also remove the requirement for a cash balance scheme to secure limited price indexation when it buys an annuity to secure pension credit benefits (as has been the case for members' benefits since 3 January 2012).

- **Stakeholder pensions**

  Following the abolition of the requirement for employers to designate a stakeholder pension scheme, amendments to the stakeholder regulations will:

  - permit a member who is already having contributions to a stakeholder scheme deducted from pay to vary the amount;
  - remove the employer's obligation to deduct and pay a member's contributions if matters outside the employer's control have required a stakeholder scheme designation to be withdrawn (eg, the scheme has been closed or is winding up).

- **Bridging pensions**

  The draft regulations had included a proposed power for trustees to amend bridging pension rules (if in place on 5 May 2010):

  - that specify age 60 or 65 (or anything in between) as the date that they stop, so that they instead stop at state pension age; or
  - so that they can be stopped at age 60 (F) or 65 (M) (but not later) rather than at state pension age.

  These provisions do not appear in the final regulations: the Government is still considering representations made and will conduct a further informal consultation in this area.

VAT on fund management fees

The Wheels CIF case (see **WHiP Issue 29**), concerning VAT charged to Ford's DB pension schemes' common investment funds (CIFs) on investment management fees, has been decided by the European Court in favour of HMRC.

Case report:
http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=134607&occ=first&dir=&cid=990662

UK legislation exempts the management of authorised unit trusts and open-ended investment companies from VAT. Following the 2007 European Court decision in *JP Morgan Fleming Claverhouse Investment Trust*, closed-ended collective investment undertakings such as investment trust companies were also exempted. DB schemes' CIFs were not, however, and the Wheels CIF trustee, supported by the NAPF, challenged this.

The purpose of the exemption is to ensure that investment through collective investment undertakings is no more highly taxed than investing directly in securities. The principle of fiscal neutrality precludes different providers from being taxed differently for carrying out the same transactions. The European Court therefore considered whether comparable transactions were being carried out.

It decided that they were not, distinguishing on three grounds DB schemes and their CIFs from funds that are exempted:

- A CIF is not open to the general public.
- A CIF is not sufficiently comparable with funds that are open to the general public to be in competition with them. In particular:
  - individual members do not bear investment risks; and
  - employer contributions are paid as a means of satisfying legal obligations to employees.

This decision does not address the position under DC pension schemes. Questions about their VAT treatment have been referred to the European Court in another case. That case will also decide whether fund management services could be exempt as payment processing (which is an argument still open to DB schemes too).

There is also another European Court decision due later this year, in which the Court is expected to consider whether an employer can treat all of the VAT incurred on pension scheme costs as its own input tax (and therefore recover them as input tax).

GMP equalisation

DWP legislation

The Pensions Minister has said, at an Association of Pension Lawyers event, that he is looking at spring 2014 to amend the law relating to sex discrimination and GMPs (see **WHiP Issue 32**) and that the Government is still considering options for a one-off equalisation exercise involving GMP conversion.

Pension Protection Fund

The PPF has published an updated statement on equalisation for GMPs and the application of a statutory minimum to PPF compensation for schemes in a PPF assessment period. It has also published a document setting out the main changes from the November 2011 version of the statement.

PPF GMP page:
http://www.pensionprotectionfund.org.uk/technicalguidance/pages/guaranteed_minimum_pension.aspx

Automatic enrolment

For background on the requirements of the automatic enrolment legislation, please see our briefing note, "**New requirement to enrol workers in a pension scheme**".

Simplification

The Government announced that it will consult on proposals to simplify automatic enrolment. The simplifications being considered include:

Press release:
http://www.dwp.gov.uk/newsroom/press-releases/2013/feb-2013/dwp021-13.shtml

- *"Making assessment of the workforce easier*
- *Making it easier for money purchase schemes to show they meet the scheme quality requirements*
- *Removing the duty to enrol particular groups such as those who benefit from protection because they have already exceeded the lifetime allowance for tax purposes [ie, enhanced or fixed protection]."*

Consultation:
http://www.dwp.gov.uk/consultations/2013/ae-tech-changes-draft-regs.shtml

The consultation was issued just as we went to press. We will report on its content in the next issue.

Pension provision following a TUPE transfer

Consultation:
http://www.dwp.gov.uk/consultations/2013/transfer-of-employment-regs.shtml

The Government is consulting on proposed amendments to the regulations that require a minimum level of pension provision when an occupational pension scheme member is transferred to a new employer under the TUPE regulations. There is an overlap with the automatic enrolment legislation, which also applies to new employers of transferred employees and requires different (less onerous) minimum pension provision.

Since 6 April 2005, the Pensions Act 2004 has imposed requirements on employers to which employments are transferred. These only apply in respect of members or prospective members of an occupational pension scheme: employees who benefit from personal pensions are protected by TUPE, which provides that the same arrangements must continue. The employer must provide one of three alternatives:

- A DB scheme that meets one of the following criteria:

  (a) the benefits meet the contracting-out reference scheme standard;

  (b) the benefits are worth at least 6% of pensionable pay (as defined in the scheme rules) for each year of employment and the employee contribution requirement is no greater than 6% of pensionable pay; or

  (c) in any period the employer contribution rate is at least the same as the employee's, up to a maximum of 6% of pensionable pay.

  (In practice, criteria (b) and (c) are difficult to apply and are ignored.)

- An occupational DC scheme under which the new employer at least matches employee contributions up to 6% of basic pay.
- A stakeholder pension scheme under which the new employer at least matches employee contributions up to 6% of basic pay.

The Government now proposes to:

- clarify that employees may choose their DC contribution rate (subject to the scheme rules specifying what can be chosen, eg, a minimum rate or whole number percentages) and then receive matching employer contributions up to a maximum of 6%;
- allow the new employer to satisfy the pension protection regulations by paying at least the DC contributions paid by the former employer immediately before the transfer, as an alternative to matching the contributions chosen by the employee (up to 6%).

There is no proposal to correct a peculiarity of the legislation, ie, that the provision of DC contributions to a personal pension that is not a stakeholder scheme (eg, a group personal pension) is not a permitted option. This would require an amendment to the primary legislation.

The consultation closes on 5 April 2013.

NEST amendments
The Government has confirmed its proposals (see **WHiP Issue 37**) to amend the legislation governing NEST from 1 April 2013. The most interesting changes are as follows.

Consultation response:
http://www.dwp.gov.uk/consultations/2012/prop-amendments-nest-order.shtml

Amending Order:
http://www.legislation.gov.uk/uksi/2013/597/contents/made

- NEST will be allowed to decide whether or not to accept as a member someone who is a "qualifying person" under the cross-border regulations (ie, someone subject to the social and labour laws of another EEA state).
- Employers will be able voluntarily to cease to participate in NEST by giving notice. (There is currently no provision for this.)
- For an individual with multiple employments, NEST will be able to accept minimum contributions from all of the employers even if they together exceed the maximum permitted contribution.

Same sex partners

Retrospective pension rights for civil partners
The Equality Act 2010 purports to allow schemes to limit civil partners' pensions to benefits accrued since 5th December 2005. The lawfulness of this exemption has been challenged by Liberty, the human rights organisation. It is supporting an individual, Mr John Walker, in a claim against his former employer, Innospec Limited, of unlawful sexual orientation discrimination. They have been successful at the Employment Tribunal but the decision seems likely to be appealed. The final outcome may result in all schemes having to give fully retrospective spouses' pensions to civil partners and, in the future, to same sex spouses (see below).

Case report:
http://www.brickcourt.co.uk/uploads/walker-v-innospec-et-judgment.pdf

Mr Walker retired from Innospec in 2003 on an annual pension of about £85,000. He entered into a civil partnership in 2006. The scheme informed Mr Walker that, on his death, there would only be a contracted-out pension payable to his civil partner of about £500 pa. If Mr Walker was married to a woman at the date of his death then the spouse's pension would be £41,000 pa.

The Employment Tribunal decided that the Equality Act 2010 did not comply with the EU equal treatment directive's sexual orientation discrimination requirements but that it should, in accordance with principles of EU law, be interpreted so that it did comply. This meant that Innospec was in breach of the Act in restricting the benefits prospectively payable to Mr Walker's civil partner.

Many DB schemes (the Government estimates 2/3rds) did not take advantage of the Equality Act exemption and gave civil partners rights to full spouses' pensions, on the basis that the actuarial cost of providing full equality was not great. Some, however, did restrict benefits. Employment Tribunal decisions are not binding, even in other Tribunal cases, but this one seems likely to be appealed. In any event, there is pressure on the Government to amend UK law to require fully retrospective equality.

Marriage (Same Sex Couples) Bill
The Government has published its response to the consultation (see **WHiP Issue 33**) on same sex marriages. It proposes to give same sex spouses the same pension rights that apply to civil partners.

Consultation response:
http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/consultation-response?view=Binary

The Marriage (Same Sex Couples) Bill therefore provides as follows.

The Bill:
http://services.parliament.uk/bills/2012-13/marriagesamesexcouplesbill.html

- The provision of the Equality Act 2010 interpreted in *Walker v Innospec Limited* (see above) will be amended to allow the restriction of same sex spouses' benefits to pensionable service since 5 December 2005 (but not later), in the same way as for civil partners. If the decision in that case is right about civil partners then the restriction in respect of same sex partners would seem to be similarly ineffective.
- GMP rights will be extended to same sex spouses.

Disclosure of information

Consultation:
http://www.dwp.gov.uk/consultations/2013/occ-personal-pension-schemes.shtml

The Government is consulting on draft regulations intended to consolidate and harmonise the main disclosure of information regulations for occupational and personal pension schemes. They would also make some changes. The following are the most important proposed changes that would affect occupational pension schemes.

- Electronic disclosure using a website and email alerts is currently only permissible for matters covered by the disclosure of information regulations. Some other regulations that require disclosure will be brought within the electronic disclosure regime (but will remain separate from the disclosure regulations). This includes disclosure in the following areas:
  - early leaver statements
  - transfer values
  - contracting-out elections
  - winding-up notices, reports, etc
  - pensions and divorce (earmarking and pension sharing)
  - appointment of an independent trustee
  - consultation by employers over listed changes
  - notices about payments to employers
- Annual reports for multi-employer schemes will have to list "*the 100 largest investments by value held by the scheme ... stating what percentage of the resources of the scheme each such investment represents*", identifying which are employer-related, and (if there is more than 5% employer-related investment) listing the relevant investments and the employer concerned. For these purposes, parties connected to or associated with employers do not count.
- There will be a new requirement for DC schemes to tell members about "lifestyling" investment arrangements (including "target date funds") as part of the basic scheme information and again before it starts to apply (eg, with an annual statement). The information to be given includes a summary of the advantages and disadvantages of lifestyle funds.
- Only basic information about transfer options will need to be provided as part of the basic scheme information, with more detailed information to be made available on request.
- The basic scheme information obligation to disclose "*how employers' contributions are determined*" will be replaced by "*a summary of the contributions, if any, payable by the employer and the member*".
- There will no longer be an obligation to tell members what their "normal pension age" is but there will be a new obligation to tell them when benefits are payable.
- The requirement to give information on AVCs (if applicable) as part of the basic scheme information will be removed.
- Information about material alterations to basic scheme information will have to be given as soon as possible after the decision is taken and no later than three months thereafter. Currently, this must be done before the change takes effect, where practicable, and not later than three months after that.
- DB benefit statements will no longer be required to use a specific scheme pension age: instead they can use any date specified by the trustees or agreed with the member. Trustees will also no longer have to use a calculation date that is within one month of the statement.
- When issuing statutory money purchase illustrations, schemes will no longer have to assume that an index-linked annuity with an attaching dependant's pension will be purchased. If a scheme changes its illustration assumptions, it will have to inform the member and explain the effect on the illustration. Illustrations will be allowed to include expected future voluntary contributions (both for active and, if they are expected to pay any such contributions, for deferred members).
- Members retiring early will have to be given information about their benefits before their pension starts or within one month thereafter (currently two months).
- DC members who are reaching pension age will have to be sent information about retirement options etc at least four (currently six) months in advance.
- There will no longer be a requirement to tell members each time a "real time" online pension statement is updated. Once every 12 months will suffice.
- Information about the constitution of the scheme, which must be made available on request, need not be given more than once in any 12 month period.
- There will be a new overarching requirement for any information disclosed to be accompanied by a statement giving an address where further information can be

obtained.

The disclosure obligations for personal pension providers are to be significantly reduced, reflecting the fact that the FSA also imposes similar obligations.

The consultation closes on 14 April 2013. The new regulations are intended to take effect in October 2013.

HMRC

"Scheme pays" and pensions in payment
Draft regulations are intended to ensure that a "scheme pays" reduction to a pension in payment will not result in it ceasing to be a "scheme pension" for the purposes of the Finance Act 2004. This change will take effect from 6 April 2013.

Press release:
http://www.hmrc.gov.uk/news/news010213.htm

Please see our briefing note **"Finance Act 2011 tax changes"** for background on "scheme pays" arrangements for annual allowance charges.

Short service contribution refunds
HMRC has issued draft regulations to "clarify" that sums representing age-related contracting-out rebates paid by HMRC and employers' minimum payments recovered from employees, in both cases paid to formerly contracted-out DC schemes, are member contributions for the purpose of the limit on short service contribution refunds from registered pension schemes. The change is due to take effect from 6 April 2013.

Draft regulations:
http://www.hmrc.gov.uk/news/contracting-out-conqs040213.htm

This will have the effect of including such amounts in the maximum authorised lump sum that may be paid as a short service refund. HMRC had previously expressed the view that such sums were already included (see **WHiP Issue 35**) but the law is not clear.

Scheme rules and the Pension Schemes Act 1993 will still determine what the scheme actually refunds, which might not include all such contributions. Under the Act, a refund must include *"contributions made to the scheme by or on behalf of the member on his own account"*. It is not clear that this has the same meaning as HMRC has ascribed to the similar provision in the tax legislation. The DWP has not commented.

Income drawdown
The Government announced in the 2012 Autumn Statement (see **WHiP Issue 37**) that the income drawdown limit for registered pension schemes would be increased to 120% of the value of an equivalent annuity for members of any age. It has now published a draft Finance Bill 2013 clause and information note, which indicate that this will apply in relation to drawdown years beginning on or after 26 March 2013. Since drawdown levels can only be altered every 12 months, many individuals will not be able to take advantage of the relaxation so soon.

Announcement:
http://www.hmrc.gov.uk/budget-updates/march2012/finance-bill-2013-draft.htm#cc

Pensions Regulator

Record-keeping
The Pensions Regulator is checking the records of about 250 schemes, selected based on *"their scheme and membership profile and previous interaction with the Regulator"*. The scheme administrators will be asked to provide information on action taken to address data issues and the processes and controls in place to maintain or improve record-keeping standards. Trustees will be informed if a review of their scheme is taking place.

Press release:
http://www.thepensionsregulator.gov.uk/press/pn13-09.aspx

Pension liberation
The Pensions Regulator has issued a guidance note for pension professionals to help them to spot potential pension liberation fraud. This includes a checklist of what to look out for and example case studies.

Press release:
http://www.thepensionsregulator.gov.uk/press/pn13-07.aspx

An awareness leaflet for members has also been published, plus a flyer about it for scheme administrators and pension providers to include when responding to transfer requests.

Trustees are required by law to process requests for transfers to registered pension schemes but the Regulator indicates that if there is cause for concern about a potential fraud then that would be a factor that it would take into account in considering whether to take action in respect of non-payment of a transfer value.

Report on UK Coal
The Pensions Regulator has published a report detailing its involvement in the restructuring of the UK Coal group. It involves a novel ongoing monitoring process.

Press release:
http://www.thepensionsregulator.gov.uk/press/pn13-02.aspx

UK Coal Mining Limited (UKCML) was the sole statutory employer of sections in two industry-wide pension schemes. Those sections had, in aggregate, approximately 6,800 members, an estimated deficit on a buy-out basis of £900 million (£543 million on the PPF basis), and assets of £451 million.

In 2012, UKCML's parent, UK Coal Plc, concluded that the group's operating structure and balance sheet needed a restructuring. The trustees were the group's largest unsecured creditor. The Regulator indicated that it would not agree to a regulated apportionment arrangement with a transfer into the Pension Protection Fund, but encouraged the parties involved to explore other funding solutions.

A plan was agreed which has resulted in substantially all of the economic interest in the group transferring from shareholders to the trustees of the UK Coal sections of the schemes. The group was split into two ring-fenced businesses, mining and property. Only the mining business would be liable to fund the scheme sections. The trustees would hold a 75.1% equity stake in the holding company of the property business, with UK coal holding the other 24.9%. The new ownership structure meant that there would not be any unlawful employer-related investment.

Unusually, the trustees and the group agreed to establish a monitoring plan to identify and address ongoing risks to the scheme sections. The group agreed to provide ongoing financial and management information to the trustees.

The Regulator worked with the trustees and the group during negotiations and provided clearance for the restructuring. It continues to engage with the trustees in relation to the ongoing risk monitoring.

OTC derivatives: EU EMIR regulation

A number of provisions of the EU EMIR regulation came into effect on 15 March 2013 for OTC derivatives counterparties, central counterparties and potential trade repositories.

For trading counterparties this means the introduction of formal deadlines for the delivery of trade confirmations and specific requirements regarding marking-to-market and marking-to-model in respect of OTC derivatives that are not centrally cleared. Non-financial counterparties that have breached the prescribed "clearing threshold" are also required to notify their competent authorities. Other requirements, relating to the reporting of transactions to trade repositories and risk mitigation techniques regarding portfolio reconciliation and compression, will follow over the coming months.

Our briefing note, which summarises the requirements, is **here**.

Pension funds have a stay of execution from the clearing obligation (but not the other obligations) until at least August 2015 but counterparties are already affected. Trustees may therefore already be seeing a central clearing counterparty interposed between them and their OTC derivative counterparties.

Financial transaction tax

The European Commission has adopted a proposal for a tax of 0.1% on equity and fixed income transactions and 0.01% on derivatives transactions, intended to apply from 1 January 2014. They apply to transactions involving a party in any of 11 member states (even if the other party is outside those states). The signatory states do not include the UK but do include France, Germany and Italy. There is no exemption for pension funds. The 11 member states concerned need to agree the proposal unanimously for it to take effect.

EU web pages:
http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm

http://europa.eu/rapid/press-release_IP-13-115_en.htm

http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2013_71_en.pdf

Parental leave

Unpaid parental leave entitlement extended
Regulations have increased the entitlement to unpaid parental leave from 13 weeks to 18 weeks, from 8 March 2013.

Regulations:
http://www.legislation.gov.uk/uksi/2013/283/made

Shared parental leave
The Government is consulting until 20 May 2013 on how shared (flexible) parental leave will work. There is no specific consultation on anything pensions-related. See **WHIP Issue 37** for background.

Consultation:
https://www.gov.uk/government/news/businesses-and-families-invited-to-shape-process-for-shared-parental-leave

ABI code of conduct on retirement choices

An ABI "*Code of Conduct on Retirement Choices*", to apply to insurers who are pension providers from 1 March 2013, is intended to help individuals better understand their options at retirement and choose the right annuity, by the provision by insurers of clear and consistent information.

Press release:
http://www.abi.org.uk/Media/Releases/2013/02/ABI_RETIREMENT_CODE_WILL_HELP_PEOPLE_GET_BEST_PENSION_DEAL_.aspx

The Code provides as follows.

- At least two years from retirement, the provider will encourage the individual to consider retirement options. Six months from retirement and at least six weeks from retirement, it will send details explaining the various options, such as options for combining small pots and the open market option.
- Providers will explain the different ways to take retirement income. This will cover providing for dependants, lifestyle or medical conditions that may mean the individual is eligible for an enhanced annuity, and protecting against inflation.
- The benefits of shopping around will be clearly highlighted along with sources of further advice. Providers will no longer include their own annuity application forms.

The ABI will publish specimen annuity rates in the summer across a range of different products offered by its members.

Agreement on disclosure of charges

Some high profile pension providers have announced an agreement to ensure the consistent and straightforward disclosure of pension charges and costs to employees in workplace pension schemes. The agreement will be implemented by summer 2014 for schemes newly established for automatic enrolment and by 31 December 2015 for older workplace schemes. A common definition of all charges to be disclosed at the outset will be developed in the first half of 2013.

This agreement was developed by the ABI and its members in conjunction with a working group consisting of the FSA, IMA, NAPF, TPR and DWP. While the initial group of signatories is drawn from the ABI's membership, consultation will continue on extending this to other pension providers.

Press release:
http://www.abi.org.uk/Media/Releases/2013/01/Pension_charges_to_be_made_clearer_to_UK_savers.aspx

This and previous issues of WHiP can be found on our website **here**.

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If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Paul Stannard, Peter Esam, Philip Stear, Susie Daykin and Daniel Gerring.

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